No. 15782

UNITED STATES

COURT OF APPEALS

For The Ninth Circuit

ADOLPH G. HOFFMAN,

Appellant,

vs.

C. H. HALDEN, DR. DONALD E. WAIR, DR. G. F. KELLER and DR. F. SYDNEY HANSEN,

Appellees.

APPELLANT'S REPLY BRIEF

Appeal from the United States District Court for the District of Oregon

HONORABLE WILLIAM G. EAST, Judge

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I.

CAUSE OF ACTION

Appellant alleges deprivation of equal protection, due process, and privileges and immunities by individuals acting under color of state law, purposeful discrimination and victimization, intentional violation

of orders of Court and law, coercion and intimidation to prevent him from exercising constitutional rights, forcing him to remain silent and not to testify, filing fake affidavits, imprisonment without due process, refusal to inform him of charges and/or to summon his attorney or witnesses, refusal to release him until he dismissed a wholly unrelated civil action, and discrimination in other particulars. Assuming these facts, as it must on motion to dismiss has plaintiff stated a cause of action under any conceivable state of facts?

This Court in *Agnew v. City of Compton* (CA 9), 239 F.2d 226, 231, 1957 stated:

> "In what is said above, we do not mean to hold that a cause of action may never be stated where false arrest and imprisonment are involved. As before indicated, such a cause of action for the purpose of discriminating between persons or classes of persons. *Snowden v. Hughes,* 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497. See also *Moffatt v. Commerce Trust Co.,* 8 Cir. 187 F. 2d 242, cert. den. There is here no such allegation.
>
> "Such a complaint has also been held sufficient where it was alleged that the trial was fraudulently conducted. *McShane v. Moldovan,* 6 Cir. 172 F.2d, 1016. A like result has been reached where there were allegations as to unnecessary violence, refusal to inform of the charge, and personal indignities. *Davis v. Turner,* 5 Cir. 197 F.2d 847."

None of appellees question the complaint sets forth all elements required except Keller, who contends we

did not allege he was acting "under color of law."

It is charged he acted "under color and pretence of the statutes, ordinances, customs and laws of the State of Oregon," he misued his "authority and that of other agencies in the State of Oregon including the Circuit Court and Morningside Hospital.", he was appointed by "Circuit Judge to make an adequate medical and psychological examination of plaintiff," he refused "to make an examination of plaintiff while he was held at Morningside Hospital" and refused to "release plaintiff while he was held at said Morningside Hospital." (TR 9-12). These allegations leave no doubt he was acting under color of law having been specifically appointed, and it was his duty to make examinations before and during trial; he was in charge of state patients at Morningside Hospital where plaintiff was forcibly taken months later and it was his official duty to act in good faith.

The Supreme Court stated:

> "Misuse of power, possessed by virtue of State Law and made possible only because the wrongdoer is clothed with the authority of State law is action taken 'under color of' state law." *U. S. v. Classic,* 313 U. S. 299, 326, 61 S.Ct. 1031, 1043, 15 L.Ed. 1368.

Keller could do the acts only because he was appointed by the State.

With this exception, however, other appellees apparently concede all essential elements are stated. They object that the complaint allegedly contains "unfounded conclusions" "completely unsupported by facts indicating in what fashion the plaintiff was treated differently from others in the same situation."

The complaint establishes inequality. In keeping with notice pleading, appellant did not set forth all facts. In all probability if he had, appellees would have objected it was not a "short and plain statement of the claim" as required.

After setting forth the official capacities in which appellees acted and a conspiracy to maliciously and intentionally deny equal protection, due process and privileges and immunities it charged:

1. Hansen and Halden ignored the Court direction he be brought before the Judge but instead locked him up; filed false return of citation; refused to permit him to communicate with witnesses, doctor, or counsel; refused to summon District Attorney as specifically required; took all his money and directed him to be silent at the hearing in Circuit Court; refused to inform him of the charges, imprisoned him with persons charged with crime in violation of Oregon laws. Can there be any doubt that plaintiff was treated "dif-

ferently from others in the same situation"?

2. Keller was well aware of these facts but suppressed them; made virtually no examination despite a specific direction by the Court; filed a false affidavit; several months later when appellant was forcibly brought to Morningside Hospital where Dr. Keller was in charge, in direct violation of the Court, Keller refused to obey the order, locked him up, took his money and would not permit him to communicate with anyone.

3. Wair knew these facts; that he was not mentally ill; but refused to release him although he had authority to do so at any time; instead he kept him in the hospital until appellant dismissed a wholly unrelated civil action. (TR 12-13).

The complaint is *not* predicated upon either:

1. A mistake in judgment in making a judicial decision; or

2. For carrying out an order of the Court.

We agree there would be no liability. It would be wrong to hold a ministerial officer who merely carries out an order of Court; or to hold an officer liable for mistaken judgment where exercising a quasi-judical function. This complaint does not rest on that basis. But

it cannot be seriously contended that they merely made a mistake in judgment when they ignored instructions of Court, filed false affidavits, coerced and intimidated him, directed him to remain silent, refused to carry out the statutory mandate requiring them to summon the District Attorney, and other respects.

This distinction is illustrated by appellees' primary case, Dunn v. Gazzola (CA 1) 216 F.2d 709, 711, 1954. One defendant, a police sergeant, merely notified plaintiff to appear in Court and took her to prison following her conviction. He did nothing outside his jurisdiction and acted as directed by the Court. Defendant Marron, Chief of Police, merely served her with a complaint charging child neglect, and took her before the Judge. He acted strictly pursuant to the order of Court, statutes, and within his authority. Defendant probation officer merely carried out an order of Court. Fifth defendant was Superintendent of Reformatory and sixth, Commissioner of Correction. They did nothing other than fail to release plaintiff. They acted as directed and merely concluded in apparent good faith appellant was not sufficiently well. The other defendant, Probate Judge, was immune.

In this case appellees did not act as ordered but defied the Court; did not act within their jurisdiction; did not exercise a discretionary power, but discharged

ministerial duties in a vindictive and personal way. The Probate Judge is not a party.

The Court noted in the Dunn case (711) : "no facts alleged in the complaint would furnish any foundation for a claim that the defendants, or any of them, had as their purpose to deprive the plaintiff of the equal protection and immunities of the laws. * * * plaintiff alleged unfair treatment but not that it was motivated by any discriminatory design."

Here, such facts are pleaded. When a motion to dismiss is filed facts well pleaded must be assumed true. Other facts could also be developed.

This is apparent in appellees' secondary case, *Kenney v. Fox,* (CA 6) 232, F.2d 288, 1956. This action was filed against Probate Judge, Superintendent of State Hospital, physicians at State Hospital and an attorney who recommended commitment. The Court held the law cannot abrogate judicial immunity of a Judge. The two doctors could not be held because they acted strictly as directed. The mere fact they might be honestly mistaken as to plaintiff's mental condition would not impose liability. The attorney did nothing other than prepare the initial papers. All defendants acted as directed, none exceeded jurisdiction, and there was no evidence of purposeful discrimination. There

was also no violation of laws of his state. The distinction is manifest.

That the 6th Circuit was not expressing a rule of absolute immunity will be seen by *McShane v. Moldovan* (CA 6), 172 F.2d, 1016, 1949. A conspiracy by the J. P., complaining witness, constable and others to arrest plaintiff without a warrant on charge of assault where complaining witness and Justice fraudulently prepared a biased jury list, stated a cause of action.

II.

PRIVILEGE

Appellees seek to emasculate the Act on grounds of privilege. It is now settled that mere private action does not give rise to violation.

> *Collins v. Hardyman,* 341 U. S. 651, 71 S. Ct. 937, 95 L. Ed. 253, 1951.

Appellees then seek to close the door altogether by arguing that virtually every public official is absolutely immune. It is argued that the following are exempt: Prosecuting Attorney; Warden; Deputy Sheriff; Chief Assistant Prosecuting Attorney; Police Commissioner; Police Officers; Assistant State's Attorney; Court Reporter; Probation Officer; Police Chief;

Police Sergeant; Electrical Inspector. An analysis of cases cited reveal simple applications of rule, that: (1) Judges and Legislators are immune in virtually every situation; (2) Quasi-judicial officers are exempt only when carrying out an order of Court or making a judicial decision; (3) Ministerial offices are immune only when executing an order of Court without negligence.

Lewis v. Brautigam (CA 5), 227 F. 2d 124, 1950;

Cooper v. O'Connor, 69 App. DC 100, 99 F. 2d 135, 138;

43 *A. J. Public Officers* §277.

Wair argues that public officers acting within the scope of their duty, have tort immunity whether they act honestly or maliciously in all situations. This is not in accord with the cases and would wholly destroy the Act. The Courts have already recognized that mere private acts are not encompassed. If the law is also that all officers are exempt in all situations, the law would perish.

There is a conspicuous lack of agreement among appellees. Counsel for Keller does not mention privilege. Formery attorney for Halden and Hansen, recent

District Attorney of Multnomah County, filed an action in the District Court (*Langley v. Thornton,* No. 8743) based upon the Civil Rights Law against appellee Wair's counsel, Oregon's Attorney General. He argued strenuously that privilege did not apply.

Immunity under the Act is discussed in great detail in a recent article in 68 Harvard L. R. 1229. The author recognized that if immunity is applied too extensively, the Civil Rights Laws will be destroyed. The author states (1230):

> "The recent decision in *Francis v. Lyman* not only expresses an awareness that the doctrine of immunity applied too broadly might vitiate the Civil Rights Acts, but also demonstrates the need for an examination of the reasons for reading immunity into those laws" * * * *" (1231):
>
> "Even though many of the dismissals were based at least partly on the immunity of the defendant, in most of the cases the plaintiff's substantive claim itself was without merit, and therefore the language of the cases cannot be taken as an accurate description of the immunity doctrine's strength." (1232): * * * * even though the policies in favor of immunity on liability under state law are still present when recovery is sought under the Civil Rights Acts, it seems clear that the purpose of the federal acts may on occasion override those policies. When a suit is based on deprivation of a federally guaranteed right, the need to enforce federal limitation on state action constitutes a consideration in favor of recovery which is not present in suits under state law. In order to determine

whether immunity should prevail in any given case, it is necessary to ascertain whether respect for state autonomy in the matter involved, coupled with traditional reasons for granting immunity to the type of officer involved, justify a restriction on the broad purposes of the Civil Rights Acts."

This is also recognized in 66 *Harvard L. R.* 1285, 1298 as follows:

"Although unlimited liability may be unwise, absolute immunity would be equally undesirable, for it would virtually deprive the Acts of all meaning insofar as they provide an action at law against state officials. It seems necessary, therefore, to reach some compromise in order to protect civil rights and still further independence of administration."

As previously conceded virtually all cases have held judges immune; *Bradley v. Fisher,* 13 Wall. 335, 80 U. S. 335, 20 L.Ed. 646, 1872; although even a judge is not absolutely immune in all circumstances.

Ex parte Virginia, 100 U. S. 339, 1880 (discrimination in selection of jurors);

Similarly, legislators have been exempt in virtually every situation;

Teeney v. Brandhove, 341 U. S. 367, 71 S. Ct. 385, 95 L.Ed. 1019, 1951.

although it has been suggested liability might be imposed if "there should be a series of legislative attempts to thwart federally guaranteed rights in this area, damages may prove to be the only effective means in preventing future attempts at infringement." 68 Harvard L.R. 1229, 1235.

These are the only classes where courts have extended almost absolute immunity. Even members of subordinate legislative bodies, such as aldermen and school board members, have only qualified immunity.

Cobb v. City of Malden (CA 1), 202 F.2d 701, 1953; 68 Harvard L.R. 1229, 1235.

On the other hand, quasi-judicial officers have received only limited protection and limited to situations where they were acting in the same way that a judge or legislator might act. It is stated in 66 Harvard L.R. 1285, 1298:

"It would seem that the Courts should place emphasis on the nature of the particular act which has allegedly deprived the plaintiff of his rights. An official should receive greater protection if he is acting in adjudicatory or quasi-legislative capacity. Almost all the arguments in favor of granting judicial and leg-

islative immunity apply equally to such an official; * * *

"Where the administrative action is not primarily adjudicative or quasi-legislative, only limited protection should be given."

Immunity in Civil Rights cases tends to coalesce with immunity in other cases.

U. S. v. Tarumianz (D. C. Del.), 141 F. Supp. 739, 1956.

That rule is expressed 43 A. J. p. 86:

> "Where an officer is vested with this discretion and is empowered to exercise his judgment in matters brought before him, he is sometimes called a quasi-judicial officer, and when so acting he is usually given an immunity from liability to persons who may be injured as a result of an erroneous or mistaken decision, however erroneous his judgment may be, provided the acts complained of are done within the scope of the officer's authority, and without willfulness, malice or corruption."

38 A. L. R. 663, 90 A. L. R. 1423; 11 L.Ed. 506.

In this case the officers did not act within the scope of their authority but in derogation of it and in addition willfully and maliciously.

It has always been recognized that a quasi-judicial officer, who acts outside his jurisdiction or without authorization, is liable.

43 A. J. p. 89.

Ministerial officers are subject to even greater liability. They are liable when they act without proper authority, for willfullness or malice, for nonfeasance, and even negligence.

43 A. J. p. 90-91.

In this case it is difficult to believe Halden or Hansen, who were merely instructed to bring appellant before the Judge, could be performing anything other than a ministerial duty. The same is true of Keller, who was merely instructed to make an examination. Acts of this kind have been given immunity only as long as in accordance with orders of Court. This they did not do and, in fact, did precisely the opposite.

Counsel for Halden and Hansen in final summation quotes Judge Hand in *Gregoire v. Biddle* (CA 2), 177 F. 2d 579, 580, where he recognized quasi-judicial officers enjoy similar protection with judges while exercising a discretionary function. This was most emphatically not absolute privilege. In *Burt v. City of New York* (CCA 2), 156 F. 2d 791, 1946, Hand stated that the Snowden decision may compel any "officer of the state * * * * to defend any action brought in the District Court * * * * in which the plaintiff, however irresponsible, is willing to make the

necessary allegations." Here the allegations are present and also utmost good faith. A registered architect, charged the City and its officials abused their power and denied his building permits and imposed unlawful conditions. This stated a cause of action. The same remedy should be available where personal liberty is infringed by denial of every protection granted by equal protection, due process and laws of his state. Surely human rights are as sacred as property rights!

III.

STATUTE OF LIMITATIONS

Only two appellees raise this question.

District Judge East declined to pass on this issue. (Tr. 18-20). Judge Mathes declined to decide this question because he did not consider that he was "fully advised" (Supp. Tr. 38). He felt there were too many factual problems which could not be resolved without testimony.

No cross appeal was filed.

In any event limitations is not at bar because:

1. The complaint alleges continuing conspiracy which did not terminate until June 18, 1956.

2. Oregon Law provides that if when a cause of

action accrues, a person is insane or in execution for less than life, time of disability shall not be counted.

O. R. S. 12.160.

Hoffman was stripped of civil rights January 10, 1952, when adjudged mentally ill. Only by virtue of a hearing June 18, 1956, was he restored to civil rights and adjudged competent. Prior to that time he could not have instituted such an action without a guardian. F. R.C.P. 17(c). If he had requested a guardian, the Court would normally have appointed the Superintendent of Hospital. O.R.S. 126.135. Here Superintendent was appellee, Wair.

Kramer v. Sidlo (Tex. Civ. App.), 233 S.W. 2d 609, 1950 is analogous. Plaintiff was adjudged incompetent but later was restored to his status of sanity by the Court August 16, 1940. The Court concluded (LC 611):

> "The statutes of limitation were suspended as to him until he was restored to sanity on August 16, 1949."

3. Filed in the District Court is an extensive affidavit prepared by Hoffman January 15, 1955, relating circumstances of filing. This affidavit was not included in transcript or supplemental transcript. The action was filed in his behalf by George Gibson, not a mem-

ber of the bar and having no legal training. Hoffman accompanied Gibson and they filed the papers with the Clerk. They were advised to return Monday to the Marshal since filing occurred Saturday. On Monday Hoffman met Gibson and handed him the Marshal's charges. Gibson assured him this would be done. However, Gibson became fearful that legal action would be taken against him. Later Gibson wrote directly to Judge Fee. The Judge was understandably disturbed and sent a strongly drafted reply. At call Gibson was apprehensive and did not appear. The case was dismissed. Hoffman didn't discover this fact for sometime. In the meantime, appellant attempted to obtain an attorney but had difficulty because the Probate Judge was originally a defendant.

Rule 3 provides a civil action is commenced by filing a complaint. Numerous cases have held an action is commenced for all purposes by filing with the Clerk, since issuance of summons is a ministerial act. The statute involved is a federal statute and federal rules should control.

Further Oregon Law provides that an attempt to commence an action "shall be deemed equivalent to the commencement thereof * * * * when the complaint is filed, and the summons delivered, with the intent that

it be actually served, to the Sheriff or other officer of the County which the defendants, or one of them usually or last resided." O.R.S. 12.030.

In accordance with the usual procedure the Clerk undoubtedly delivered the summons to the Marshal. Certainly Mr. Hoffman clearly intended action commence immediately.

If this Court feels Limitations is a serious issue, we suggest the complete affidavit be made available.

4. Limitations applicable is O.R.S. 12.080, which is six years for liability created by statute. The complaint charges deprivation of privileges, immunities, and equal protection. This is a creature of the Constitution.

IV.
DEVELOPMENT OF CIVIL RIGHTS

This case squarely presents the question whether the Act is to be relegated to cases of negro discrimination. Apparently appellees would even eliminate this by an all embracive privilege.

Researchers have revealed the first sentence of the Fourteenth Amendment, which made Negroes citizens, was added, almost as an afterthought, after the

amendment had left the Joint Committee on Reconstruction and had passed the house.

Flack, The Adoption of the Fourteenth Amendment, 1908.

The debates reveal consistently broad intention by framers of Civil Rights Law and Fourteenth Amendment.

Congressional Globe, 39th Congress, 1st Sess., 1088, 2511, 2462.

Appellees assume the purpose of the Act was to implement the Amendment. Actually debates demonstrate the purpose of the Fourteenth Amendment was to put the Civil Rights Act of 1866 beyond repeal.

50 Col. L.R. 131, 141.

That the Law was intended to cover such a situation is seen by remarks of Senator Howe, a prominent Republican at its adoption. He listed as elements of equal protection, right to hold land, right to collect wages, and right to appear in Court and give testimony, and stressed that "these are not the only rights." Later, the Slaughter-house Cases, 16 Wall. 36, 1873, Civil Rights Cases, 109 U. S. 3, 3 S. Ct. 18, 1883, and others

established a pattern of narrow debilitating construction.

50 Mich. L.R. 1323, 1342.

As a result "The scope and effectiveness of the civil rights statutes became progressively smaller as they were increasingly subject to the cold water of the judicial process." (L.C. 1342) and "* * * * the bold motives and the brave arguments of the architects of the constitutional revolution in civil rights were forgotten under the din of a judicial re-writing of their efforts." (L.C. 1337.)

However, there has been a strong recent trend to return to original scope and meaning. As stated in *Valle v. Stengel* (CA 3), 176 F. 2d 697, 702, 1949:

> "Any narrow interpretation of the Civil Rights Act has been obliterated, we think, by the Screws decision."

There was also an expansion of the criminal aspects. Prior to the establishment of the Civil Rights Section in the Department of Justice in 1939, Section 242 had lain virtually dormant and involved in only two reported cases. Since that time it has been applied in numerous decisions such as *U. S. v. Classic*, 313 U. S. 299, 61 S. Ct. 1031, 15 L. Ed. 1368, 1941; *U. S. v. Saylor*, 322 U. S. 385, 64 S. Ct. 1101, 1941; *Screws v. U. S.*, 325 U. S. 91, 65 S Ct. 1031, 89 L.Ed. 1495, 162 A.L.R.

1330, 1945; *Williams v. U. S.,* 341 U. S. 97, 71 S. Ct. 576, 95 L. Ed. 774, 1951. As a result there are "some encouraging signs in the application of some of those statutes to the broad rights which have come to be protected against state action under the due process clause."

50 Mich. L.R. 1323, 1357.

Furthermore, it has been suggested that § 1981 may be broader than § 1983 or § 1985.

50 Mich. L.R. 1323, 1356.

This action is brought under all of these provisions.

Recent statements have reaffirmed the original intent. In *Hague v. C.I.O.,* 307 U. S. 496, 59 S. Ct. 954, 83 L. Ed. 1423, 1939, Justice Stone stated the act:

> "extends broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. This includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will be observed that they are those rights secured the persons whether citizens of the United States or not, to whom the amendment in turn extends the benefit of the due process and protection clauses."

A recent article in 26 Ind. L. J. stated, 379:

> "That Courts are beginning to accord them the

scope and significance which Congress originally intended."

Governor F. F. Low of California in recommending ratification of Fourteenth Amendment said:

> "this section declares equality before the law for all citizens is a solemn and binding form of Constitutional enactment, to which no reasonable objection can be urged." California S.J. 49, 1867-68.

The principal draftsman of the Civil Rights Bill, Senator Trumbull, stated during the debates:

> "Congress is bound to see that freedom is in fact secured to every person throughout the land; he must be fully protected in all his rights or person and property; and any legislation or any public sentiment which deprived any human being in the land of those great rights of liberty will be in defiance with the Constitution; and if the states and local authorities, by legislation or otherwise, deny those rights, it is incumbent on us to see that they are secured." Congressional Globe, First Session, 39th Congress, 1st Ses. p. 77, 1866.

Clearly Adolph Hoffman was denied practically all fundamental rights.

If the Fourteenth Amendment and Civil Rights Laws have any meaning, it should apply to one denied the right to know charges against him, denied an attorney or witnesses, incarcerated in direct defiance of Court, the subject matter of false affidavit, not been

informed of charges against him and whose other rights have been curtailed.

As further evidence of this trend the following cases have recently found violations of the Act:

1. *Brown v. U. S.* (CA 6), 204 F. 2d 247, 1953. A private citizen, who conspired with a Deputy Sheriff to cause the arrest and imprisonment of inhabitants for the purpose of extortion.

2. *U. S. v. Jackson* (CA 8), 235 F. 2nd 925, 1956. A prison guard wilfully beat and injured a prisoner administering illegal summary punishment with intent to deprive him of federal rights.

3. *Koehler v. U. S.* (CA 5), 189 F. 2d 711, 1951. A constable and deputy beat a prisoner, threatened him, abused him, and failed to lodge a proper charge against him. (Criminal case.)

4. *Gordon v. Garrson* (D.C.E.D. Ill.), 77 F. Supp. 477, 1948. During a prison break in which he had no part, plaintiff was inadvertently mistaken for another prisoner, and seriously injured by third persons. He charged the Superintendent by solitary confinement, refusal to supply proper food or medical aid, caused him to suffer permanent injuries.

V.
SUMMARY

The policy described as "judicial negation" (50 Mich. L.R. 1323, 1340) has been arrested and more realistic interpretation applied. There is a marked trend to return to standards the drafters intended. The standards are still strict, but not impossible. The following must be present:

1. Action under color of law not merely individual action;

2. Purposeful, systematic, and intentional discrimination;

3. Inequality of treatment;

4. Not privileged or compelled by law;

5. Damages.

Each element is pleaded. Under fundamental rules they must be assumed true for purposes of motion to dismiss. While all facts which could be offered have not been set out there are sufficient factual averments to show intentional systematic discrimination and considerably more than required by notice pleading. He was deprived of virtually every constitutional safeguard Oregon law was violated at least nine ways. *McCollum v. Mayfield* (D.C.N.D. Cal.), 130 F. Supp. 112, 1955

is instructive. An action was brought under the Law by plaintiff, who was held in the jail awaiting trial, against sheriff, deputy and county jailer, who forced plaintiff to wash shelves in the county jail in violation of California law forbidding labor on a public work until final judgment. Plaintiff charged they also refused medical care. This stated a cause of action. Judge Oliver Carter stated (LC 115):

> "In this connection it is immaterial that the complaint is based in part on allegations of a failure or refusal to act, rather than an affirmative wrongful act. Furthermore, the alleged wrong is properly described as being done under color of State authority despite of the fact that the officials involved allegedly exceeded their authority or acted (or failed to act) in contravention with the dictates of their duty."

This is very similar.

The complaint contains every element. If the Court should refuse appellant the right to present facts to substantiate his pleading, it will nullify the act. Three appellees hide behind immunity despite their violation of express orders of Court. Immunity extends to quasi-judicial officers only where they act as directed by the judiciary or make judicial determinations.

Apparently Courts have been hesitant to apply the literal language of the Act in all situations because

fearful of the extent of Federal supervision over state conduct. A recent article has suggested that rather than strike down every complaint, a clear frustration of the Act, it would be best to transfer to civil cases the "Screws test of actual intent to violate Constitutional rights." 68 Harv. L. R. 1236. Another article in 66 Harv. L. R., 1285, 1298, recognized this as follows:

> "It is not surprising that the federal courts, confronted with an increasing volume of litigation, have hesitated to undertake the extensive supervision over state affairs invisaged by a Congress faced with the problems of the Reconstruction Era. Nevertheless, it is important that the Acts do not become a nullity, for Congress appears reluctant to provide new civil rights legislation."

Individuals charged with mental illness are entitled to minimal protection.

Respectfully submitted,

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